

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:FSH:MAN:3:TL-N-2853-01  
RLPeacock

date:

to: Richard Antoinette, Team Manager, Manhattan Appeals  
Attention: Mel Rosenbach, Appeals Officer

from: Area Counsel (Financial Services & Healthcare) (Area 1: Manhattan)

subject: [REDACTED] ([REDACTED] through [REDACTED])

STATUTES OF LIMITATION EXPIRE: [REDACTED]

UIL Nos. 6501.08-00 and 6501.08-17

INTRODUCTION

This memorandum responds to Paul Steindler's request for assistance via telephone on May 1, 2001. This memorandum should not be cited as precedent. Specifically, you have asked our office to provide you with the appropriate language to use on a Form 872-P Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership ("Form 872-P") with respect to [REDACTED] (EIN [REDACTED]) (" [REDACTED] ") for the taxable years ending December 31, [REDACTED], December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED].

ISSUES

1. Which entity is the proper entity to execute a Form 872-P for [REDACTED] for the taxable years ending December 31, [REDACTED], December 31, [REDACTED], December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED]?
2. What specific language should be used on the Form 872-P for [REDACTED] for the taxable years ending December 31, [REDACTED], December 31, [REDACTED], December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED]?

BACKGROUND

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon.



2.1 The Mergers. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law

...

(a) [REDACTED] Merger Sub shall be merged with and into [REDACTED] (the "[REDACTED] Merger"). [REDACTED] shall be the surviving corporation in the [REDACTED] Merger and shall continue its corporate existence under the laws of the State of Delaware. As a result of the [REDACTED] Merger, [REDACTED] shall become a wholly owned subsidiary of [REDACTED].

(b) [REDACTED] Merger Sub shall be merged with and into [REDACTED] (the "[REDACTED] Merger"). [REDACTED] shall be the surviving corporation in the [REDACTED] Merger and shall continue its corporate existence under the laws of the State of Delaware. As a result of the [REDACTED] Merger, [REDACTED] shall become a wholly owned subsidiary of [REDACTED].

As a result of the merger, [REDACTED] and [REDACTED] became the wholly-owned subsidiaries of [REDACTED]. [REDACTED]'s shareholders owned approximately [REDACTED] % of [REDACTED]. [REDACTED]'s shareholders owned approximately [REDACTED] % of [REDACTED]. In addition, [REDACTED] Merger Sub and [REDACTED] Merger Sub, which were created solely for the purpose of acquiring [REDACTED] and [REDACTED], respectively, were merged out of existence. The merger was completed on [REDACTED].

On [REDACTED], [REDACTED] executed a Form 872-P captioned "[REDACTED]" for the taxable years [REDACTED] through [REDACTED]. The Form 872-P was signed by [REDACTED], the Assistant Treasurer of [REDACTED]. Appeals executed the Form 872-P on [REDACTED]. Based on this Form 872-P, the current statute of limitations expires on [REDACTED].

At issue is which entity may execute a Form 872-P on behalf of [REDACTED] for the taxable years [REDACTED] through [REDACTED]. Also at issue is the proper language to use on a Form 872-P for [REDACTED].

DISCUSSION

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 8.1.1, chapter 3, provides procedures for processing consents to extend the statute of limitations on Assessment.

1. Which entity is the proper entity to execute a Form 872-P on behalf of [REDACTED] for the taxable years [REDACTED] through [REDACTED]?

The first issue is which entity is the proper entity to execute a Form 872-P for [REDACTED] for the taxable years ending December 31, [REDACTED], December 31, [REDACTED], December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED].

During the taxable years at issue, in the case of tax attributable to adjustment of partnership items, the unified procedures of TEFRA and I.R.C. § 6229 apply. Under I.R.C. § 6229(a), the statute of limitations on assessment of tax attributable to partnership items expires three years from the date the partnership tax return is filed, or the date the partnership tax return is due, whichever is later. I.R.C. § 6229(b), however, provides that the Secretary and the tax matters partner, or any other person authorized by the partnership, may consent in writing to an agreement to extend the statute of limitations. The Service uses the Form 872-P to memorialize such consent for partnerships.

Here, the tax matters partner for [REDACTED] is [REDACTED]. It is, therefore, the proper entity to extend the statute of limitations on assessment on behalf of [REDACTED].

The representatives of [REDACTED] authorized to execute a Form 872-P are the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer authorized to act. See Rev. Rul. 83-41, clarified and amplified by Rev. Rul. 84-165. [REDACTED] signed the Form 872-P on behalf of [REDACTED], and listed his title on the Form 872 as "Assistant Treasurer, [REDACTED] Partner." As an officer, [REDACTED] is authorized to execute consents to extend the period of limitations on behalf of [REDACTED].

In addition to the signature of an officer of [REDACTED], because [REDACTED] is a subsidiary of [REDACTED], an officer of [REDACTED] must also sign the Form 872-P. See generally, Treas. Reg. § 1.1502-77 (providing that

"no subsidiary shall have authority to act for or to represent itself in any such manner."). The mechanics of this "double signature" requirement are set forth in section 2, infra. Note that the merger between [REDACTED] and [REDACTED] does not impede [REDACTED]'s ability to execute the Form 872-P as the parent of [REDACTED], since [REDACTED] survived the merger and remains in existence.

The current Form 872-P does not contain the signature from an officer of [REDACTED]. Instead, it is signed only by an officer of [REDACTED]. While we will still defend the form of the current Form 872-P, we recommend that you amend the current Form 872-P to include the signature of an officer of [REDACTED], as the parent company of [REDACTED]. This modification will serve to ratify the intent of the parties.

2. What specific language should be used on the Form 872-P?

The second issue is what language should be used on the Form 872-P for [REDACTED].

Our office concurs with the current caption on the Form 872-P extending the statute of limitations for [REDACTED]'s [REDACTED] through [REDACTED] income tax liabilities, which reads, "[REDACTED]."

As discussed in section 1, supra, however, the Form 872-P for [REDACTED] requires an additional signature from an officer of [REDACTED], since [REDACTED] is the parent company of [REDACTED], the tax matters partner of [REDACTED]. The signature block for the common parent should appear as follows:

[REDACTED] by [name of  
authorized representative/title], on behalf  
of [REDACTED], Tax Matters  
Partner of [REDACTED].

The signature block for [REDACTED] should appear as follows:

[REDACTED], by [name of  
authorized representative/title], Tax Matters  
Partner of [REDACTED].

The Form 872-P previously executed in [REDACTED], does not contain the above language. Accordingly, we advise you to amend the Form 872-P to incorporate the recommended language.

Should you have any questions regarding this matter, please contact Robin L. Peacock at (212) 264-1595, extension 246.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL  
Area Counsel  
(Financial Services and  
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By: \_\_\_\_\_  
THEODORE R. LEIGHTON  
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